THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.15319 OF 2007

Dated: 20th JULY, 2007.

Between :

1. M/s. J.C.M. Silk Traders,
Rep. By its Proprietor Sri J.C.Muni Swamy,
S/o. Kondappa, aged about 60 years,
Occ: Business, R/o. Vasanthapeta,
Proddatur, Kadapa District.,
And another … Petitioners

And

State Bank of Hyderabad,
Regional Office, Tirupathi,
Rep. By its Authorised Officer,
SBH Regional Office, Tirupathi. … Respondent

THE HON'BLE Ms. JUSTICE G. ROHINI

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ORDER :

This writ petition is filed seeking a Mandamus declaring the action of the respondent Bank in issuing the possession notice dated

18-6-2007 under Section 13 (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act') as arbitrary and illegal.

The fact that the 1st petitioner herein availed financial assistance from the respondent Bank by depositing title deeds of immovable property belonging to the 2nd petitioner as security is not in dispute. Since the petitioners committed default, the respondent filed O.S.No.142 of 2001 on the file of the Court of the Senior Civil Judge, Proddatur, Kadapa District for recovery of money due and the same was decreed on 29-4-2003 for a sum of Rs.2,98,363-50 ps. Pursuant thereto, the respondent Bank filed E.P.No.65 of 2006 which is pending in the Court of the Senior Civil Judge, Proddatur as on today.

While so, the respondent having invoked the provisions of the Act sought to recover the amounts due from the petitioners by enforcing the secured asset i.e., the schedule property of E.P.No.65 of 2006.

The said action is challenged in this writ petition contending inter alia that the action of the respondent Bank in invoking the provisions of the Act ignoring the civil proceedings pending is arbitrary and illegal.

At the outset, it is to be noted that the Securitisation Act is a special enactment which was promulgated to enable the Banks and Financial Institutions to realize the long time assets by enforcing the security interest without the intervention of the Courts and the Tribunals.

Sections 35 and 37 of the Act made it clear that the provisions of the Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. As held by the Supreme Court in TRANSCORE (M/s) v. UNION OF INDIA AND ANOTHER[1] the doctrine of election of remedies has no application so far as the enforcement of the secured assets under the

provisions of the Act is concerned.

Having regard to the object sought to be achieved by the Act and for the reasons stated above, it cannot be said that there is any prohibition to invoke the provisions of the Act pending the execution proceedings pursuant to the decree granted by a Civil Court.

Hence, I do not find any substance in the contention raised by the petitioners and accordingly the Writ Petition is dismissed. No costs.

G. ROHINI, J.

Dt. 20–07-2007
gbs

[1] 2007 (1) ALD 109 (SC)